EX PARTE OR LATE FILED

1201 PENNSYLVANIA AVENUE, N. W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000

TELEFAX: (202) 662-6291
TELEX: 89-593 (COVLING WSH)
CABLE: COVLING

ORIGINAL

Ex parte

LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND
TELEPHONE: 44-171-495-5655
TELEFAX: 44-171-495-3101

BRUSSELS CORRESPONDENT OFFICE
44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-512-9890
TELEFAX: 32-2-502-1598

KURT A. WIMMER
DIRECT DIAL NUMBER
(202) 662-5278

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 1 / 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

January 12, 1996

The Hon. Reed E. Hundt, Chairman
The Hon. James H. Quello, Andrew C. Barrett,
Susan Ness and Rachelle B. Chong, Commissioners
Federal Communications Commission
1919 M Street, N.W., Eighth Floor
Washington, D.C. 20054

Re: *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates, MM Docket 95-92*

Dear Chairman Hundt and Commissioners:

The Network Affiliated Stations Alliance ("NASA"), a coalition of the affiliate associations of the ABC, CBS and NBC Television Networks that represents the more than 600 television stations affiliated with these networks, filed with its comments in this docket a study by National Economic Research Associates, Inc. demonstrating that the balance of power in the network-affiliate relationship continues to rest with the networks. In their reply comments, the networks criticized some elements of the NERA study. NERA now has drafted the attached Supplemental Report that answers these critiques fully.

The sole economic and empirical evidence on file in this docket supports retention of the three core network-affiliate rules -- the right to reject rule, the option time rule, and the exclusive affiliation rule. These rules preserve broadcasters' essential ability to serve the public. The proposals to repeal or amend them should be rejected.

Respectfully submitted,

Kurt A. Wimmer
Counsel for the CBS Television Network Affiliate Association

Wade H. Hargrove
Brooks, Pierce, McLendon,
Humphrey & Leonard
Post Office Box 1800
Raleigh, N.C. 27602
Counsel for the ABC Television Network Affiliates Association

Werner K. Hartenberger
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
Counsel for the NBC Television Network Affiliates Association

No. of Copies rec'd 0+1
List ABCDE

cc: Docket File
Counsel for ABC, CBS and NBC

NATIONAL ECONOMIC
RESEARCH ASSOCIATES
1166 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK 10036
TEL: 212.345.3000 FAX: 212.345.4650

Consulting Economists

BROADCAST TELEVISION NETWORKS AND AFFILIATES:
SUPPLEMENTAL REPORT

Prepared by

Phillip A. Beutel
Howard P. Kitt
Linda McLaughlin

National Economic Research Associates, Inc.

January 10, 1996

BROADCAST TELEVISION NETWORKS AND AFFILIATES:

SUPPLEMENTAL REPORT

I. SUMMARY

In their Reply Comments, CBS Inc., Capital Cities/ABC, Inc. and National Broadcasting Company, Inc. criticize our Study[1] on two broad grounds:

1. They question the time period covered in our analysis. In particular, the networks challenge our use of 1980 rather than an earlier starting date. In addition, they claim our use of 1993 compensation data rather than more up-to-date figures biased our conclusions.[2]

2. The networks suggest that certain factors not explicitly included in our data affected our conclusions. For example, they allege that average and median affiliate compensation are distorted by "the large increase in the number of UHF and small market" affiliates. [CBS Reply at v.; see also ABC Reply at 8, NBC Reply at 17.]

With minor exceptions, the networks did not provide data to support their assertions. Rather, they focus on recent changes—between 1993 and "today"—in affiliate switches and reported affiliate compensation to support their position. [ABC Reply at 8, CBS Reply at 3, NBC Reply at 16.]

---

[1] Our Study ("Broadcast Television Networks and Affiliates: Economic Conditions and Relationship—1980 and Today", October 27, 1995, submitted with comments of the Network Affiliated Stations Alliance, October 30, 1995), and the networks' Reply Comments (dated November 22, 1995 [ABC] and November 27, 1995 [CBS and NBC]) were submitted in connection with Federal Communications Commission, *In the Matter of Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates, Notice of Proposed Rule Making,* MM Docket No. 95-92, June 15, 1995.

[2] In addition, the networks question our focus on the relationship between networks and affiliates and their respective bargaining power. The Section of the NPRM to which our Study responded (NPRM ¶¶ 8-17), explicitly asked for comments on "network/affiliate relations" and "network/affiliate bargaining."

The purpose of this supplemental report is to supply additional data to show that our conclusion that affiliates have not gained bargaining power relative to the networks is unaffected by the networks'.[3] In particular:

1. Our results are not dependent on the time period we used. If we had chosen an earlier beginning period, such as 1957 as suggested by CBS, our conclusions would have been even stronger. For example, the growth in stations relative to networks is more pronounced since 1957. Further, when we update our tables to reflect the 1994 station financial data (released since we prepared our Study), we get similar results.

2. Our results cannot be explained away by "omitted" factors. For example, the addition of more small-market affiliates does not explain the decline in network compensation. There are similar or greater declines in compensation for affiliates in large markets.

3. Moreover, the networks' emphasis on the recent affiliation switches as indicative of a decline in network bargaining power is misleading. Many of the affiliate switches in 1994-95 were the result not of a decline in network bargaining power but of an increase in network ownership interests.

II. MISPLACED CRITICISM OF TIME PERIOD

The networks state that the rules at issue were predicated on conditions in radio in 1941 and were applied to television without comment in 1946. [ABC Reply at 4; see also NBC Reply at 8 and CBS Reply at 5.] As a result, they claim our Study is flawed because it focuses on an "arbitrary" time period.[4] In this regard, CBS quotes the 1957 *Barrow Report* as an illustration of a pre-1980 time, closer to the point when the rules were first applied to television. This quote clearly shows the limited network alternatives in 1957, that is, there were only one or two stations

---

[3] Our purpose here is not to provide a point-by-point rebuttal to the networks' Reply Comments concerning our Study. Many of the points made by the networks mischaracterize our analysis. For example, ABC argues, "NERA's compensation analysis, which purports to show a reduction (after adjustment for inflation) from 1980 to 1993 ignores the 200 million dollars in compensation increases since 1993." [ABC Reply at ii.] At p. 10 of our Study, immediately following our discussion of the 1980 to 1993 compensation data, we said, "even increases of ...$200 million...would not put affiliates in a better position today after accounting for inflation."

[4] We note that the NPRM itself refers to the possible effect of the emergence of cable and other alternative program distributors in the "15 years since the release of the *Network Inquiry Report*" on the need for network-affiliate rules. [NPRM ¶4.]

with which the three networks could affiliate in the vast majority of television markets at that time. Since 1957, the number of stations has almost tripled while the number of networks has increased from three to four.[5] As a result, the balance has shifted towards the networks: There has been a sharp decline in the number of markets with networks in excess of stations and a dramatic increase in markets with stations in excess of networks. As shown on Table S1, fully 180 markets had fewer stations than networks in 1957, compared to 67 today. Further, there were only 16 markets with more stations than networks in 1957, compared to 106 today.[6] The increases in the networks' alternatives between 1957 and 1995 are even more pronounced than the increases between 1980 and 1995 shown in our Study.

Similarly, had we chosen 1957 as a beginning date, we would have seen a greater drop in average network compensation after adjustment for inflation. As shown on Table S2, average affiliate compensation declined 49 percent between 1957 and 1993, after adjustment for inflation. Moreover, there was little change between 1993 and 1994, producing a decline of 48 percent from 1957 to 1994.[7] This decline in inflation-adjusted average affiliate compensation is slightly greater than the decline from 1980 to 1993 shown in our Study.

III. ILLUSORY EFFECT OF "IGNORED" FACTORS

The networks criticize our comparison of average and median affiliate compensation because "NERA fails to control for a number of variables which *could* depress average compensation without necessarily reducing compensation for any station..." [ABC Reply at 8, emphasis added.] ABC lists two factors—new UHF affiliates in smaller markets and reduced network programming—which *hypothetically could* explain away the decline in inflation-adjusted

---

[5] Compare *Barrow Report* cited in CBS Reply at 4-6 (431 stations) and NPRM Appendix C (1145 commercial stations).

[6] The 16 markets with stations in excess of networks in 1957 is comparable to the nine markets with *VHF* stations in excess of networks today. The number of markets with four or more VHF stations in 1957 is not readily available; however, based on the data at hand, it is clear that not all 16 markets fit into this category.

[7] It does not appear that this change in the average compensation is influenced by a change in the number and composition of affiliates. When we compared 1957 average affiliate compensation in selected markets (with no change in affiliates over the last four decades) with the average for markets in the same size class in 1994, we found compensation changes in excess of 48 percent. [FCC, *Final TV Broadcast Financial Data—1957* and NAB *Television Financial Report*, 1995.]

compensation. In fact, these factors do not affect our conclusion. As shown on Table S3, median network affiliate compensation in selected large-market groups[8] declined 50 to 61 percent between 1980 and 1994 after adjustment for inflation, while median compensation among all affiliates declined 53 percent. In contrast, the second factor listed by ABC—the amount of programming offered by the networks—declined by only 9 percent, clearly, this is insufficient to account for the observed decline in network compensation during this period.[9]

The networks also criticize our comparison of clearance rates between 1977 and 1994 for two reasons: the increase in clearance is statistically insignificant and ignores the cutbacks in the amount of network programming due to low clearances in certain time periods.[10] [ABC Reply at 6-7, CBS Reply at 16-17, and NBC Reply at 18.] After explicit consideration of these factors, we do not find the type of change in clearances rates—a statistically significant decrease—that would be associated with an increase in affiliate power. Table S4 shows the 1994 clearance rates, adjusted for the 12 percent decline in nonprime-time programming offered by the networks. (The adjustment counts the programming no longer offered as if it had zero clearance; according to CBS, the network stopped offering programming during 10-11 AM when clearances declined to 49-61 percent. [CBS Reply at 17.]). With the clearance rates applying to the same number of hours in 1980 and 1994, prime-time clearances increased slightly and nonprime-time clearances decreased somewhat during this period. Neither change is statistically significant.

IV. OVEREMPHASIS ON RECENT CHANGES

Last, the networks stress the recent changes in affiliation, and accompanying increases in compensation, in 1994-95 "as a direct result of the competition from Fox" to indicate an improvement in the relative position of affiliates. [ABC Reply at 8; see also CBS Reply at 12

---

[8] The largest size groups (except 1-10) were selected in order to avoid markets with "new affiliates, mostly UHF stations in smaller markets," the potentially influencing factor according to ABC. Size group 1-10 was eliminated because it includes many of the network owned and operated stations.

[9] Economists Inc., *An Economic Analysis of the Prime Time Access Rule,* March 7, 1995, Table D-2. This table compares network programming time in 1977 and 1994.

[10] In our Study we concluded, "The change in clearance rates does not indicate any increase in affiliate power." [NERA Study at 12.] ABC misstates our conclusion as "the networks have increased their bargaining leverage," and so sees our statement concerning statistical significance as a "fatal flaw." [ABC Reply at 6.]

and NBC Reply at 7-8.] In our Study [Table 3], we showed that there were many affiliation switches in 1994-95, a substantial portion of which involved Fox; however, they were not all a result of competition for affiliates in the usual sense. In fact, most of the affiliate switches were related to network acquisitions of ownership interests in individual stations and station groups. For example, Fox acquired a passive interest in New World; the New World station in Cleveland (a CBS affiliate) switched to Fox and the former Fox affiliate switched to CBS. This type of switch does not illustrate an increase in affiliate negotiating power. Table S5 shows that 10 of the 14 affiliation switches in 1994 and 20 of the 36 in 1995 were related to such acquisitions (including passive interests). Table S6 removes affiliate switches related to acquisitions from the analysis and supplies a longer term perspective. It shows that the number of nonacquisition switches in 1994-95 are similar the number of nonacquisition switches in the late 1970s and early 1980s.

Similarly, a longer term perspective is useful to put the recent compensation changes into perspective. ABC claims that an increase of 50 percent from 1994 to 1995 "obviously indicates a substantial improvement in the affiliates' position." [ABC Reply at 8, footnote 9.] If the increase were of this magnitude, it would be a substantial improvement since 1993 or 1994, but not since 1980 (or other earlier time period). As shown on Table S7, network compensation would have to increase by almost 80 percent (almost $300 million) between 1993 and 1995 for affiliates as a group to realize the *same* compensation in 1995 as they did in 1980 after adjustment for inflation. A much larger increase would be needed for the affiliates to realize a substantial improvement.[11]

V. CONCLUSION

In our Study we found that the available evidence tends to refute the proposition that affiliates have gained negotiating power since 1980. In their Reply Comments, the networks have

---

[11] We do not know the amount of the increase in network compensation. NBC states that its compensation doubled since 1993; the other networks do not supply their own data, although ABC and CBS cite the $200 million increase reported in some trade papers. The actual change would have to be adjusted for the increase in affiliates, the decrease in the amount of network programming, and any changes in terms (e.g., the concessions by affiliates reported in the trade press or the increased affiliate availabilities cited by ABC).

raised a number of arguments in an effort to rebut our findings. As we have discussed above, these argument are without merit. Specifically, we have reexamined the data looking at a longer time period and have explicitly considered the effect of changes in the number and mix of affiliates, in the amount of network programming supplied and in reported compensation changes. In addition, we reviewed the effect of network acquisitions of stations on affiliate switches. These data, in fact, lend additional support to the conclusion that the network-affiliate relationship has not shifted toward the affiliates since 1980 or earlier.

DISTRIBUTION OF TELEVISION MARKETS BY NUMBER OF OPERATIONAL STATIONS
1957 and 1995

	1957		1995 <1	
	Number Of Stations	Number Of Markets	Number Of Stations	Number Of Markets
More Stations Than Networks	4 or more	16	5 or more	106
Stations Equal To Networks	3	37	4	38
Fewer Stations Than Networks	2 or less	180	3 or less	67
Total		233		211

Note: Includes commercial stations only.

1> Data exclude satellites to stations in the same market.

Source: 1957: *Barrow Report* as cited in *Reply Comments of CBS Inc.*, November 27, 1995, pp. 5-6.
1995: *Nera Study*, October 27, 1995, Table 1.

COMPENSATION PAID TO AFFILIATES OF TRADITIONAL NETWORKS <1
1957 and 1993, 1994

	1957		1993	1994
Average Affiliate	$236,667	<2	$610,484	$632,977
Average Affiliate (1980 $) <3	$695,451		$354,427	$359,908
Real Change from 1957			-49%	-48%

1> Traditional networks are ABC, CBS and NBC.
2> Excludes owned and operated stations. Computed as total affiliate compensation of other stations divided by total other stations less 35 independent stations.
3> Deflated using the GDP implicit deflator. [See the Bureau of Economic Analysis, *Survey of Current Business*, NIPA Table 7.3 as reported by WEFA.]

1957: FCC, *Final TV Broadcast Financial Data - 1957*, August 27, 1957, Table 2 and *Barrow Report* in *Reply Comments of CBS Inc.*. November 27, 1995, p. 5.
1993: NAB, *Television Financial Report*, 1994, Table 17.
1994: NAB, *Television Financial Report*, 1995. Table 17.

NETWORK COMPENSATION PAID TO AFFILIATES OF TRADITIONAL NETWORKS
TYPICAL AFFILIATES BY DMA MARKET SIZE
1980 and 1994

DMA Markets	1980	1994	1994 <1 -(1980 $)-	Real Change ((3)-(1))/(1)
	(1)	(2)	(3)	(4)
11-20	$1,153,300	$1,016,989	$578,256	-50%
21-30	997,000	866,401	492,632	-51%
31-40	979,600	664,727	377,961	-61%
All Markets	$521,500	$429,970	$244,479	-53%

Note: Traditional networks are ABC, CBS and NBC.
The typical affiliate is defined as the median affiliate.

1> 1994 compensation is deflated using the GDP implicit deflator.
[See the *Economic Report of the President*, February 1995, p. 278.]

Source:
1980: NAB, *Television Financial Report*, 1981, Tables 24, 26-28.
1994: NAB, *Television Financial Report*, 1995, Tables 17, 19-21.

TRADITIONAL NETWORK AFFILIATE
AVERAGE CLEARANCE RATES IN SELECTED DAYPARTS
ADJUSTED FOR THE AMOUNT OF NETWORK PROGRAMMING OFFERED
1977 and 1994

	1977		1994	
	Clearance Rates	Standard Deviation	Clearance Rates	Standard Deviation
Prime-Time	0.954	(0.049)	0.977	(0.060)
Nonprime-Time	0.868	(0.082)	0.791	(0.074)

Note: The traditional networks are ABC, CBS and NBC.
1994 nonprime-time clearance rate and standard deviation adjusted for the decline in nonprime-time programming hours of 12 percent since 1977. The same amount of prime-time programming was offered in 1977 and 1994.

Source:
1977: FCC, Network Inquiry Special Staff, *Background Report, An Analysis of The Network-Affiliate Relationship in Television,* October 1980, p. 263, Table VI-2.
1994: Economists Inc., *An Economic Analysis of the Prime Time Access Rule*, March 7, 1995, Tables D-1 and D-2.

NETWORK AFFILIATE SWITCHES:
UNRELATED AND RELATED TO NETWORK-STATION ACQUISITIONS
1994 and 1995

Market	Station	From	To	No Acquisition	Gained Affiliation Due To Acquisition Of Station By	Lost Affiliation Due To Acquisition Of Another Station In Market <1
1994						
Atlanta	WAGA	CBS	FOX		Fox	
Cleveland	WJW	CBS	FOX		Fox	
Cleveland	WOIO	FOX	CBS			Fox
Detroit	WJBK	CBS	FOX		Fox	
Kansas City	WDAF	NBC	FOX		Fox	
Kansas City	KSHB	FOX	NBC			Fox
Milwaukee	WITI	CBS	FOX		Fox	
Monroe-El Dorado	KARD	ABC	FOX	X		
Phoenix	KSAZ	CBS	FOX		Fox	
Tampa	WTVT	CBS	FOX		Fox	
Tampa	WFTS	FOX	ABC			Fox
Tampa	WTSP	ABC	CBS	X		
Yuma-El Centro	KSWT	ABC	CBS	X		
Yuma-El Centro	KECY	CBS	FOX	X		
Total 1994				4	7	3
1995						
Austin	KTBC	CBS	FOX		Fox	
Austin	KEYE	FOX	CBS			Fox
Baltimore	WBAL	CBS	NBC	X		
Baltimore	WMAR	NBC	ABC	X		
Baltimore	WJZ	ABC	CBS	X		
Birmingham	WBRC	ABC	FOX		Fox	
Boston	WBZ	NBC	CBS	X		
Boston	WHDH	CBS	NBC	X		
Dallas	KDFW	CBS	FOX		Fox	
Denver	KMGH	CBS	ABC	X <2		
Denver	KUSA	ABC	NBC	X		
Denver	KCNC	NBC	CBS		CBS	
Evansville, IN	WEHT	CBS	ABC	X		
Evansville, IN	WTVW	ABC	FOX	X		
Evansville, IN	WEVV	FOX	CBS	X		
Flint-Saginaw	WEYI	CBS	NBC	X		
Flint-Saginaw	WNEM	NBC	CBS	X		
Greensboro-High Point	WGHP	ABC	FOX		Fox	
Greensboro-High Point	WNRW	FOX	ABC			Fox
Mobile-Pensacola	WALA	NBC	FOX		Fox	
Mobile-Pensacola	WPMI	FOX	NBC			Fox
New Orleans	WVUE	ABC	FOX		Fox	
Philadelphia	KYW	NBC	CBS		CBS	NBC
Philadelphia	WCAU	CBS	NBC		NBC	CBS
Phoenix	KNXV	FOX	ABC	X		
Providence-New Bedford	WPRI	ABC	CBS		CBS	
Providence-New Bedford	WLNE	CBS	ABC			CBS
Rockford, IL	WTVO	NBC	ABC		ABC	
Rockford, IL	WREX	ABC	NBC			ABC

NETWORK AFFILIATE SWITCHES:
UNRELATED AND RELATED TO NETWORK-STATION ACQUISITIONS
1994 and 1995

Market	Station	From	To	No Acquisition	Gained Affiliation Due To Acquisition Of Station By	Lost Affiliation Due To Acquisition Of Another Station In Market <1
Sacramento	KXTV	CBS	ABC	X		
Sacramento	KOVR	ABC	CBS	X		
Salt Lake City	KUTV	NBC	CBS		CBS	
Salt Lake City	KSL	CBS	NBC			CBS
St. Louis	KTVI	ABC	FOX		Fox	
St. Louis	KDNL	FOX	ABC			Fox
Terre Haute	WBAK	ABC	FOX	X		
Total 1995				16	13	7 <3

Note: Networks are ABC. CBS. NBC and Fox.
Does not include switches involving independent stations, WB or UPN.
Acquisitions include passive interests.

1> For example. WOIO in Cleveland lost its affiliation with Fox due to Fox's acquisition of an interest in the owner of WJW.
2> Considered to be unrelated to the CBS acquisition of KCNC because KMGH reportedly switched from CBS before KCNC switched to CBS.
3> Total in 1995 does not include KYW or WCAU in Philadelphia to avoid double-counting.

Source: Data supplied by Katz Television. supplemented by *Television & Cable Factbook*. 1994-95 and NAB, *Market-By-Market Review*, 1995.
Comments of the Network Affiliated Stations Alliance in *Review of the Commission's Regulations Governing Television Broadcasting*. May 17. 1995, Exhibit I.

TABLE S6

NETWORK AFFILIATE SWITCHES UNRELATED TO NETWORK-STATION ACQUISITIONS 1968-1995

Year	Number Of Switches
1968	9
1969	3
1970	3
1971	0
1972	5
1973	4
1974	4
1975	0
1976	4
1977	15
1978	1
1979	6
1980	10
1981	6
1982	12
1983	6
1984	7
1985	6
1986	9
1987	2
1988	5
1989	3
1990	2
1991	2
1992	0
1993	0
1994	4
1995	16

Note: Networks are ABC, CBS, NBC and Fox.
Does not include switches involving independent stations, WB or UPN or switches related to network acquisitions (including passive interests) in all years.

Source:
1968-1977: FCC, Network Inquiry Special Staff, *An Analysis of The Network Affiliate Relationship in Television*, pp. 163-167.
Broadcasting Yearbook 1979, pp. A34-47.
Television & Cable Factbook, 1995.
1978-1995: Data supplied by Katz Television, supplemented by *Television & Cable Factbook*, 1982-1994 and NAB, *Market-By-Market Review*, 1995.
Comments of the Network Affiliated Stations Alliance in *Review of the Commission's Regulations Governing Television Broadcasting*, May 17, 1995, Exhibit I.
Broadcasting & Cable, March 21, 1994, pp. 52-53.
Television & Cable Factbook, 1995.

TOTAL COMPENSATION PAID TO AFFILIATES OF TRADITIONAL NETWORKS <1
AND EXTRA COMPENSATION NEEDED TO BRING 1995 TO 1980 LEVEL

	Network Compensation: Current Dollars	Network Compensation: 1995 Dollars
	--($ Million)--	
1980	$368.8	$658.4
1993	370.0	
1994	396.0	

Amount Needed to Equal 1980 Level:

1995 $658.4

Extra Relative to 1993 Needed to Equal 1980 Level:

1995 $288.4

Percent Extra:

78%

Note: 1995 dollars derived using the GDP Implicit Price Deflator for 1980 and the first 3 quarters of 1995. [See Bureau of Economic Analysis, *Survey of Current Business*, NIPA Table 7.3 as reported by WEFA.]

1> Traditional networks are ABC, CBS and NBC.

Source:
Television Bureau of Advertising, *Trends in Television*, July 1995, p. 12.